



POLICE DEPARTMENT CITY OF NEW YORK

May 26, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michele Krawiecki
Tax Registry No. 944098
108 Precinct
Disciplinary Case No. 2014-12275

Charges and Specifications:

1. Said Police Officer Michele Krawiecki, on or about October 24, 2013¹, at approximately 13:35 hours while assigned to the 108th Precinct and on duty in the vicinity of the 108th Precinct, 5-47 50th Avenue, Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that she issued a Disorderly Conduct summons to Andres F. Villa without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT

Appearances:

For CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, New York 10038

Hearing Date:

April 22, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT Nancy R. Ryan

¹Specification was amended at trial, without objection, to change the original date of October 23, 2013 to October 24, 2013.

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 22, 2016. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. CCRB called Andres Villa as a witness. Respondent called Police Officer Richard Pennecke as a witness and Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that on October 24, 2013, at approximately 1 040 hours, Mr. Andres Villa was driving on 45th Street in Queens, NY. The vehicle belonged to his co-worker, Person A. Respondent and her partner, Officer Richard Pennecke, who were patrolling in uniform in a marked RMP, pulled Mr. Villa over. Mr. Villa did not have any identification or phone on his person at the time. Mr. Villa could not provide any documentation for the vehicle. The police did not call Person A while the car was on 45th St. Respondent arrested Mr. Villa at the scene. He was transported back to the 108 precinct where he was given summonses for Disorderly Conduct and operating a vehicle without a license. During the transport back to the 108 Precinct, a sergeant who was driving Person A's car was involved in an accident. At that point Respondent did call Person A to explain what had happened with the car. Mr. Villa ultimately accepted an Adjournment in Contemplation of Dismissal for the disorderly conduct summons.

The issue in this case is whether Respondent had sufficient legal authority to issue the Disorderly Conduct summons to Mr. Villa. Mr. Villa, Respondent and Officer Pennecke testified as to the circumstances preceding his arrest.

According to Mr. Villa, he was moving his coworker's car as a favor to her. He had left his wallet and phone in his office, which was nearby. When he saw the police car with flashing lights behind him he pulled over to the curb. (Tr. 13-15) The officers pulled their car over at an angle behind him and parked about half a car's width from the curb. (CCRB Ex. 2) Mr. Villa testified that when the police approached his car he told them he had identification in his office and they could call to have someone bring it to him. (Tr. 15) During his encounter with the officers, Mr. Villa asked them to call his office a few times, which they did not do. (Tr. 20) Mr. Villa further testified that the officers then asked him several times to look for the car registration in the glove compartment, but he told them he couldn't do that without the permission of the owner. (Tr. 16) After Respondent said he would be arrested if he didn't show them something, he did open the glove compartment but there was no registration in it. (Tr. 17) Mr. Villa testified that he gave the officers his name, address, phone number and office information. (Tr. 18) The officers went to their car and then returned and placed him in handcuffs and arrested him. (Tr. 19)

Mr. Villa described his demeanor during the car stop as "nervous" since he didn't know why he had been stopped. (Tr. 19) He acknowledged that he was loud during the encounter but explained that he was a loud person. He stated that maybe the police thought he was screaming at them, but he didn't think he yelled at the police or was disrespectful to them. (Tr. 28) Mr. Villa testified that cars were able to pass on 45th Street during the stop by "squeezing" past the patrol car and there were a few pedestrians in the area. (Tr. 27) He described the pedestrians' demeanor as "curious". (Tr. 28) He estimated that the entire encounter lasted about 20-25 minutes and that

his conversations with the officers took up approximately 5 to 10 minutes of that time. (Tr. 21, 55)

Officer Pennecke testified that they stopped Mr. Villa because the car he was driving had a broken back tail light. (Tr. 65) He approached Mr. Villa and asked to see his license, registration, and insurance card. Mr. Villa did not respond at first and then said he had no identification on him. Officer Pennecke then asked for papers pertaining to the car. (Tr. 66-67) Respondent then came to the driver's side of the vehicle and spoke to Mr. Villa. After refusing requests to go into the glove compartment several times, Mr. Villa finally opened it and found nothing in it. (Tr. 68)

Officer Pennecke described Mr. Villa as seeming very annoyed, being very loud and flapping and raising his arms. (Tr. 68) Mr. Villa's demeanor caused Officer Pennecke to be afraid for his safety. (Tr. 78-79) He also noted that the traffic was starting to build up since people were watching what was going on and the cars had to move slowly around where the police car and the car Mr. Villa had been driving were parked. (Tr. 69-70) He added that there were a lot of cars honking and people watching what was going on. (Tr. 70)

Respondent testified that after the car was stopped she approached the passenger side door but when she saw that Mr. Villa was refusing to provide any identification to Officer Pennecke she went to the driver's side. (Tr. 87) She described Mr. Villa as continually asking why they needed to see his documents. (Tr. 87) Respondent further testified that Mr. Villa seemed extremely annoyed and was loud and flailing his arms. (Tr. 88) Respondent testified that she has done thousands of car stops and had never felt as nervous before. (Tr. 88, 90-91) Respondent felt threatened by Mr. Villa's actions in "being loud, causing a scene, throwing his hands up in the air refusing to comply with normal questions a police officer would ask." (Tr. 107) After she finally got a name and birth date from Mr. Villa, she went to the patrol car and ran

the information. No information came up indicating that Mr. Villa had a driver's license. (Tr. 91) Respondent then called the Sergeant to make sure he was on his way to the scene before she handcuffed Mr. Villa as she was anticipating resistance by Mr. Villa. (Tr. 92)

Respondent testified that she arrested Mr. Villa for Disorderly Conduct since, "he was so loud and noncompliant, drawing a scene, causing people to walk away from the situation, causing traffic to back up for a ridiculously long time between 20 minutes and a half an hour which never be that long for a car stop and for no reason. For no reason at all, he was causing all this public annoyance and alarm and vehicular traffic for absolutely no reason, other than he just didn't feel like being bothered to comply with us." (Tr. 93)

With regard to the traffic situation, Respondent testified that the placement of the vehicles as drawn by Mr. Villa on CCRB Ex. 2 was not accurate. (Tr. 86) She noted that Mr. Villa's vehicle was about ten feet away from the curb and the patrol car, which was about two feet behind Mr. Villa's car was also about ten feet away from the curb. (Tr. 87) At trial she testified that if cars could pass them, it was with difficulty. (Tr. 99). She acknowledged on cross-examination that she believes she told the CCRB interviewer that cars couldn't get by. (Tr. 101) She also explained that she did not have Mr. Villa move his car closer to the curb since she did not know if he had a driver's license. (Tr. 99)

With regard to the pedestrians in the area, Respondent noticed people on the street corner staring at the scene and pedestrians crossing the street in a direction away from the scene. (Tr. 108) At the time Respondent believed the pedestrians were alarmed by the scene, but acknowledged that was an assumption on her part. (Tr. 111)

The only issue in this case is whether Respondent issued a Disorderly Conduct summons to Mr. Villa without sufficient legal authority to do so. I find that the CCRB has not proven by a preponderance of the evidence that Respondent did not have such legal authority.

New York State's Penal Law Section 240.20 provides that a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she engages in certain actions. In this case, CCRB has failed to present any evidence of which subsection of actions under PL 240.20 Respondent charged Mr. Villa with. No actual summons was offered into evidence, nor was there any testimony specifying a subsection. Therefore, if Mr. Villa's either intended to, or recklessly created a risk of, causing public inconvenience, annoyance or alarm and the conduct fit under any subsection of PL 240.20, Respondent would have sufficient legal authority to issue the summons.

I find that a reasonable officer could conclude that Mr. Villa's conduct did recklessly create a risk of causing public inconvenience, annoyance or alarm during the traffic stop. Mr. Villa admitted that he was being loud towards police officers for at least five to 10 minutes in an area where pedestrians were looking on and other drivers were passing by. I credit the testimony of Respondent, as corroborated by Officer Pennecke, that Mr. Villa was also flailing his arms around during this confrontation. It is important to note that there is no requirement under PL 240.20 that an actual public inconvenience, annoyance or alarm occur. *See N.Y. v. Weaver*, 16 N.Y.3d 123, 128 (2011) ("[A] defendant may be guilty of disorderly conduct regardless of whether the action results in public inconvenience, annoyance or alarm if the conduct recklessly creates a risk of such public disruption.") A crowd need not actually form for a disorderly conduct arrest to be valid. *Id.* (there is no *per se* requirement that members of the public must be involved or react to the incident for a finding of disorderly conduct.) At the heart of the disorderly conduct statute is the notion that the public should not be adversely affected, or be put at risk of being adversely affected, by a defendant's conduct. In this case, Respondent was justified in determining that Mr. Villa's behavior might alarm or annoy the public.

With regard to whether Mr. Villa's conduct which created such a risk of alarm or annoyance fell under a subsection of PL 240.20, I find that Mr. Villa's behavior could be considered disorderly in that he exhibited behavior perceived as threatening by Respondent. Respondent described how out of thousands of traffic stops she has made in her career this one made her nervous and she felt threatened by Mr. Villa's abnormal behavior when asked routine traffic stop questions. Mr. Villa also created a hazardous or physically offensive situation by unnecessarily prolonging a disruption to traffic flow for no legitimate purpose. Mr. Villa in his own description of the stop described cars as only being able to squeeze by the scene. Whether it was the patrol car or Mr. Villa's car or the combination of their cars which was causing the traffic situation, the point is that both cars were only on the street as a result of the necessity of the traffic stop. And, as Respondent testified, Mr. Villa's failures to comply with the officers simple requests for documentation for no legitimate purpose other than to continually question them and to speak loudly and flail his arms at them changed what would have been a traffic stop of very limited duration required to issue a summons for the broken tail light into a half hour stop. This lengthy stop, as prolonged by Mr. Villa's actions, certainly inconvenienced all the traffic which had to squeeze past the scene to drive through 45th Street.

Respondent had sufficient legal authority to issue Mr. Villa a summons for Disorderly conduct and I therefore find Respondent Not Guilty.

APPROVED

JUL 27 2016
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,

Nancy R. Ryan
Nancy R. Ryan
Assistant Deputy Commissioner Trials